

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 12 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

DEANNA D.,	)	2 CA-JV 2010-0043
	)	DEPARTMENT B
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC	)	
SECURITY, GABRIELLA P., ANTHONY	)	
P., and ALEXIA P.,	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. JV18914900

Honorable Hector E. Campoy, Judge

AFFIRMED

Nuccio & Shirly, P.C.  
By Salvatore Nuccio

Tucson  
Attorneys for Appellant

Terry Goddard, Arizona Attorney General  
By Claudia Acosta Collings

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 Deanna D. appeals from the juvenile court’s order terminating her parental rights to her children, Gabriella P., Anthony P., and Alexia P., born in 1997, 1999, and 2001 respectively, on the ground of abandonment pursuant to A.R.S. § 8-533(B)(1).<sup>1</sup> Deanna contends there was insufficient evidence to support the court’s finding that termination of her parental rights was in the children’s best interests. We affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that any one of the statutory grounds for severance exists and if it finds by a preponderance of the evidence that termination of the parent’s rights is in the children’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “On review . . . we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, we view the evidence in the light most favorable to upholding the court’s ruling. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000).

¶3 In December 2008, the maternal grandparents (grandparents) filed a petition alleging the children were dependent. Although Deanna was notified of upcoming hearings involving the children’s custody, she left the children with the grandparents in Arizona and moved to Washington with her boyfriend in January 2009. The juvenile court ordered the Arizona Department of Economic Security (ADES) to

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<sup>1</sup>The children’s father, who relinquished his parental rights to them, is not a party to this appeal.

substitute as the petitioner in the dependency proceeding; ADES filed a substituted dependency petition in January 2009. Deanna failed to appear at the dependency adjudication hearing in May 2009, and the court adjudicated the children dependent as to her in her absence. As of August 2009, Deanna had not contacted the children since leaving Arizona in January, and ADES did not know how to reach her.

¶4 The juvenile court changed the case plan goal to severance and adoption in August and ordered ADES to file a motion to terminate Deanna's parental rights. In its motion, ADES alleged as grounds for termination abandonment, neglect and abuse, and length of time in out-of-home care. *See* A.R.S. § 8-533(B)(1), (2), (8)(a). ADES also asserted that terminating Deanna's parental rights was in the children's best interests. After a contested severance hearing held in January and March 2010, the juvenile court terminated Deanna's parental rights to the children based on abandonment and found that severance was in the children's best interests.<sup>2</sup>

¶5 Deanna does not challenge the juvenile court's finding that she abandoned the children. Rather, she contends there was insufficient evidence to support the court's finding that terminating her parental rights was in the children's best interests. She asserts that the court speculated about the harm the children would suffer if they remained with her and that there was no evidence they would benefit by terminating her rights to parent them. To establish that termination is in a child's best interests, ADES must prove that the child either would benefit from the severance or be harmed if the parental relationship continued. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz.

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<sup>2</sup>At ADES's request, the hearing proceeded solely on the ground of abandonment.

43, ¶ 19, 83 P.3d 43, 50 (App. 2004). “A best-interests determination need only be supported by a preponderance of the evidence.” *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). “In combination, the existence of a statutory ground for severance and the immediate availability of a suitable adoptive placement for the children frequently are sufficient to support a severance order.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 8, 100 P.3d 943, 946 (App. 2004). There was more than sufficient evidence to support the court’s best-interests finding here.

¶6 The record established the children had lived with the grandparents at least since the dependency proceeding had commenced and that the children were thriving. Child Protective Services (CPS) case manager Caryn Strober testified the grandparents were able to adequately care for the children, their home was a prospective adoptive home, and the children are adoptable. She opined that termination of Deanna’s rights was in the children’s best interests, noting that Deanna had left her children in Arizona in January 2009 and had not attempted to contact them until September or October 2009, a fact Deanna did not dispute. Strober added that the children had told her just before the severance hearing that they wanted their grandparents to adopt them; the grandmother likewise testified that she and the grandfather want to adopt the children. The grandmother also testified that she and the grandfather provide the children with stability and that the children’s performance in school had improved since they had lived with the grandparents.

¶7 In its ruling terminating Deanna’s rights to the children, the juvenile court noted that “[e]ach of the children supports termination of their mother’s parental rights”

and “wish[es] to be adopted by their . . . grandparents,” with whom they have a “close and bonded relationship.” In light of Deanna’s failure to communicate with the children or ADES for ten months, or to provide ADES with accurate contact information during that time period, the court concluded that “[r]elatively little is known about [Deanna’s] current functioning or stability” and that “[h]arm would come to the children should [Deanna] be in a position to provide inconsistent parental supervision or contact in the future.” The court thus concluded that adoption by the grandparents would “provide the children with the continuity of care that the children require for their own stability.”

¶8 The record amply supports the juvenile court’s finding that termination of Deanna’s parental rights was in the children’s best interests. Therefore, we affirm the court’s order.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge